

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

NICHOLAS KENNETH TRAMMELL,

Petitioner,

v.

CITY OF SAN FRANCISCO,

Respondent.

Case No. 1:21-cv-00178-NONE-HBK

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY, AND
DIRECTING CLERK OF COURT TO
ASSIGN A DISTRICT JUDGE FOR
PURPOSE OF CLOSING CASE AND TO
CLOSE THE CASE

(Doc. No. 12)

Petitioner Nicholas Kenneth Trammell is a state prisoner proceeding *in propria persona* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302, the instant federal habeas petition was referred to a United States Magistrate Judge.

On March 4, 2021, the assigned magistrate judge issued findings and recommendations recommending that the petition be dismissed “because it raises claims relating to petitioner’s conditions of his confinement, not the fact or duration of his confinement, and is duplicative of his earlier-filed case.” (Doc. No. 12 at 3.) To date, no objections have been filed to those findings and recommendations, and the time to do so has passed.

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1 The undersigned has conducted a *de novo* review of this case pursuant to 28 U.S.C.
2 § 636(b)(1)(B) and Local Rule 304. Based upon that review, the undersigned finds the pending
3 findings and recommendations to be supported by the record and proper analysis. Accordingly,
4 the findings and recommendations will be adopted in full.

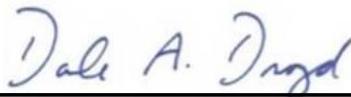
5 The court must now turn to whether a certificate of appealability should be issued. A
6 petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a district court's
7 denial of his petition, and an appeal is only allowed in certain circumstances. *Miller-El v.*
8 *Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. Courts should issue a certificate of
9 appealability only if “reasonable jurists could debate whether (or, for that matter, agree that) the
10 petition should have been resolved in a different manner or that the issues presented were
11 ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484
12 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). In the present case, the court
13 finds that reasonable jurists would not find the court's determination that the petition should be
14 dismissed debatable or wrong, or that petitioner should be allowed to proceed further. Therefore,
15 the court declines to issue a certificate of appealability.

16 Accordingly, the court orders as follows:

- 17 1. The findings and recommendations issued on March 4, 2021 (Doc. No. 12) are adopted in
18 full;
- 19 2. The petition for writ of habeas corpus (Doc. No. 1) is denied;
- 20 3. The court declines to issue a certificate of appealability; and
- 21 4. The Clerk of Court is directed to assign a district judge to this case for the purpose of
22 closing the case and then to close this case.

23 IT IS SO ORDERED.

24 Dated: April 15, 2021



UNITED STATES DISTRICT JUDGE